



C.M.A.No.2521 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

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1. D.Thangarasu
2. T.Shanthi

... Appellants

Vs.

1. Mr.Chinnarajendran
2. The New India Assurance Co. Ltd.,
Branch Office,
Rep. by its Manager,
Opposite to New Bus Stand,
Perambalur 621 212.
3. The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Periamilaguparai,
Tiruchy 620 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 for enhancement of compensation in the Judgment and Decree dated 17.07.2023 and made in M.C.O.P.No.57 of 2020, on the file of Motor Accidents Claims Tribunal/Principal District Judge, Perambalur.

For Appellants : Mr.C.Vidhusan
For R1 : Dispensed with
For R2 : Mr.K.Thirunavukkarasu
For R3 : Mr.M.Murali Vinodh

JUDGEMENT



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WEB COPY This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the fixation of negligence, fastening the liability as well as the quantum of compensation awarded by the Motor Accident Claims Tribunal in M.C.O.P.No.57 of 2020 dated 17.07.2023.

2. The brief facts of the case are as follows:-

On 03.08.2019 at about 06.45 p.m., when one Jagadeesan was riding a Yamaha motorcycle bearing Reg.TN 39 CA 4124 along with pillion rider, namely Robin Vinoth on Perambalur-Athur Road, near Bharath Petroleum Bunk, old bus stand, Perambalur carefully, cautiously at a normal speed, duly observing the road traffic rules and regulations and at that time, one Auto bearing Reg.No.TN 46 E 1613 belongs to the 1st respondent and insured with the 2nd respondent, was going ahead of the motorcycle, however, without making any sign or signal, the driver of the auto had suddenly took the auto to his right side U-turn and at the same time, a Government bus bearing Reg.No.TN 45 N 2828 belonged to 3rd respondent, was closely coming behind of the motorcycle, driven by its duty driver in a rash and negligent manner and without minding the other road users, dashed behind the said two wheeler. Due to sudden U-turn of



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Auto, the rider of the two-wheeler lost his control, hit the rear side of the 1st respondent/Auto, as a result of which, the said Jagadeesan fell down and the 3rd respondent's Government bus had run over the said Jagadeesan and he died on the spot and the said pillion rider also sustained multiple grievous injuries. Hence, the appellants, who are the father and mother of the deceased, made a claim petition before the Tribunal, seeking a sum of Rs.25,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.11,35,898/- towards compensation to the appellants. Being not satisfied with the same, the appellants/claimants have preferred the present appeal.

4. The learned counsel appearing for the appellants/claimants contended that the accident was occurred only due to negligence on the part of the Auto driver as well the driver of the bus belonging to the Transport Corporation. In order to substantiate the same, PW2/eye witness examined and he deposed stating that the accident had occurred when the driver of the said Auto without making any sign or signal,



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suddenly took U-turn and due to which, the rider of the two-wheeler was unable to control the vehicle and hit the Auto and he fell down from the vehicle, at that time, a Bus belonging to the Transport Corporation coming behind the vehicle, run-over the rider of the two-wheeler. Further, the bus driver/3rd respondent deposed as RW1 stating that due to the sudden U-turn of the Auto, this accident had occurred. In spite of this evidence, the Tribunal has fastened 50-50% contributory negligence against the rider of the two-wheeler as well as the Auto driver. Further, he would submit that both the drivers viz., Bus and Auto had driven their respective vehicles in a rash and negligent manner and without minding the other road users. It is pertinent to note that had the drivers of the Auto and bus driven the vehicle vigilantly and carefully, this accident could have been averted. Therefore, the Tribunal has to fasten the entire negligence on the part of the drivers of Bus and Auto. Hence, fixing the contributory negligence of 50% against the rider of the two wheeler is liable to be set-aside. Accordingly, he seeks to re-determine the negligence and liability in the present case.

5. The learned counsel for the appellants/claimants also challenged the quantum of compensation awarded by the Tribunal. He would submit



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that, a sum of Rs.40,000/- awarded by the Tribunal under the head of “Filial Consortium” is very meager and the same needs to be modified and enhanced by this Court. Accordingly, he prays for appropriate enhancement of the compensation in favour of the appellants.

6. Per contra, the learned counsel appearing for the third respondent/Transport Corporation would submit that, this accident had occurred only due to the negligence on the part of the rider of the two-wheeler, since he drove the vehicle in a hectic manner and dashed against the rear side of the 1st respondent/Auto and he fell down on the right side of the road. Therefore, he contended that, after considering all the oral and documentary evidence, particularly, PW2 eye-witness and RW1-driver of the bus, the Tribunal has rightly fixed 50% contributory negligence against the rider of the two-wheeler and 50% contradictory negligence on the driver of the Auto, which requires no interference.

7. The learned counsel appearing for the second respondent/Assurance Company would submit that the negligence fixed by the Tribunal is only based on the oral and documentary evidence.



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Thus, it does not requires any interference, and the same may be confirmed by this Court.

8. I have given due consideration to the submissions made by the learned counsel for the appellants and the learned counsel for the respondents 2 and 3 and perused the materials available on record.

9. In the present case, as noticed above, the accident had occurred on 03.08.2019 at about 6.45 p.m., when the rider of the two-wheeler, drove the vehicle behind the Auto and the Bus was closely moving behind the two-wheeler and the vehicles were moving slowly due to crowded area viz., Old bus stand, Perambalur and there was no occasion for the riders of the vehicles to drive in negligent manner. In view of the above and the evidence of eyewitnesses PW.2 as well as the Rw1 driver of the bus, would establish that due to sudden right U-turn of the Auto driver, the rider of the two-wheeler was unable to control the vehicle and fell down and the bus which was coming behind the two wheeler, ran over the rider of the two wheeler and cause his death. Further, RW.1 Bus



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Driver, in his proof of affidavit, has categorically stated as to how the accident had occurred. He narrated that the deceased drove the two-wheeler in a high speed, and suddenly tried to overtake the Auto in a rash and negligent manner without observing the bus coming behind him and dashed the rear side of the auto and fell down on the right side and at this juncture, the bus ran-over the rider of the two-wheeler though the bus was plying slowly in a crowded area.

9.1. A perusal of the Rw1/driver of the bus oral evidence shows that he was witnessing the entire episode of the accident, in such being the case had the driver of the bus applied brakes immediately, the unfortunate accident could have been averted. But the driver of the bus failed to do so and instead of that, he was watching the accident as to how the auto took U-turn, and the rider of the two-wheeler suddenly tried to overtake the auto and thereafter, the two wheeler hit the auto and fell down, etc., Therefore, while to this extent, he was able to narrate the accident, but he was not able to control his vehicle by applying the brakes, which shows his negligence which led to the occurrence of the accident. Therefore, this Court will have no hesitation to hold that the



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accident was occurred due to the negligence driving on the part of the driver of the bus as well. Due to the Auto, which took sudden U-turn without any indication which also the cause for the accident. Thus, both the driver of the bus as well as the Auto are the cause for the accident. Therefore, this Court is inclined to fix negligence on the part of driver of the bus, driver of the auto as well as the rider of the two-wheeler. Thus, this Court fixed the contributory negligence, i.e., 10% on the part of the rider of the two-wheeler, 45% on the part of the driver of the auto and 45% on the part of the driver of the bus. Accordingly, the liability fastened by the Tribunal is hereby modified to the extent indicated above.

10. As far as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.40,000/- towards “filial consortium”, which appears to be low, since both father and mother of the deceased are claimants. Hence, this Court is inclined to award a sum of Rs.80,000/- towards “filial consortium”.

11. Insofar as the compensation awarded by the Tribunal under all



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other heads is concerned, this Court finds the same to be just and proper and is hereby confirmed.

12. Thus, the compensation awarded by the Tribunal is modified as hereunder:-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of dependency	22,01,796/-	22,01,796/-
Funeral expenses	15,000/-	15,000/-
Loss of Estate	15,000/-	15,000/-
Filial consortium	40,000/-	80,000/- (enhanced)
Total	22,71,796/-	23,11,796/-
Less 10% contributory negligence of the deceased		2,31,179/-

13. Therefore, the second respondent/Insurance Company is liable to pay 45% of the compensation to the appellants while the 3rd respondent/Transport Corporation is liable to pay 45% of the compensation to the appellants.



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14. The learned counsel appearing for the second respondent submitted that, the Insurance Company has deposited 50% of the compensation awarded by the Tribunal. Since, this Court fixed 45% contributory negligence against the driver of the Auto, the second respondent/Insurance Company is entitled to withdraw balance 5% of the amount along with interest.

15. Accordingly, the Appeal is partly allowed modifying the award amount at **Rs.20,80,617/-** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as directed by this Court, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the respective bank accounts, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimants or application for withdrawal from the claimants, whichever is later. The appellants are entitled to equal share together with proportionate interest. The appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation



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amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimants. No costs.

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Index : Yes / No
NCC : Yes / No
jd

To

1. The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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Krishnan Ramasamy,J.,
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